



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0271; FRL- 9901-23-Region4]

**Approval and Promulgation of Implementation Plans; Kentucky; Stage II Requirements
for Enterprise Holdings, Inc. at Cincinnati/Northern Kentucky International Airport in
Boone County**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a source-specific State Implementation Plan (SIP) revision submitted to EPA by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on April 25, 2013, for the purpose of exempting an Enterprise Holdings, Inc., facility from the Clean Air Act (CAA or Act) Stage II vapor control requirements. The subject Enterprise Holdings, Inc., facility is currently being constructed at the Cincinnati/Northern Kentucky International Airport in Boone County, Kentucky. EPA's approval of this revision to Kentucky's SIP is based on the December 12, 2006, EPA policy memorandum from Stephen D. Page, entitled "*Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated.*" This action is being taken pursuant to the CAA.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0271. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding this source specific SIP revision, contact Ms. Kelly Sheckler, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is (404) 562-9222; e-mail address: sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. Final Action

III. Statutory and Executive Order Reviews

I. Background

Under the CAA Amendments of 1990, EPA designated and classified three Kentucky Counties (Boone, Campbell and Kenton) and four Ohio Counties (Butler, Clermont, Hamilton and Warren) as a “moderate” nonattainment area for the 1-hour ozone national ambient air quality standards (NAAQS) as part of the Cincinnati/Northern Kentucky Area. *See* 56 FR 56694, effective January 6, 1992. The designation was based on the Area’s 1-hour ozone design value of 0.157 parts per million for the three year period of 1988-1990.

Pursuant to the requirements of section 182(b)(3) of the CAA, KDAQ developed the Kentucky Administrative Regulation (KAR) 401 KAR 59:174 *Stage II controls at gasoline dispensing facilities*, and submitted the rule to EPA for approval as part of Kentucky’s ozone SIP. The rule was adopted by Kentucky on January 12, 1998, and approved by EPA into the SIP on December 8, 1998. *See* 63 FR 67586. Under this regulation, gasoline dispensing facilities with a monthly throughput of 25,000 gallons or more located in a Kentucky County in which the entire County is classified as severe, serious, or moderate nonattainment for ozone are required to install Stage II vapor recovery systems.

On October 29, 1999, KDAQ submitted to EPA an ozone maintenance plan and request for redesignation of the Kentucky portion of Cincinnati/Northern Kentucky area to attainment. At that time the area had three years of attaining data (1996-1998) and Kentucky had implemented all measures then required by the CAA for a moderate 1-hour ozone nonattainment area. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides and volatile organic compounds (VOC) emissions in the Area would remain below the 1990 “attainment year’s” levels. In making these projections KDAQ factored in the emissions benefit (primarily VOC) of the Area’s Stage II program, and did not remove this program from the Kentucky SIP. The redesignation request and maintenance plan were approved by EPA, effective June 19, 2000 (65 FR 37879).

Since the Kentucky Stage II program was already in place and had been included in the Commonwealth’s October 29, 1999, redesignation request and 1-hour ozone maintenance plan for the Area, KDAQ elected not to remove the program from the SIP at that time. On April 6, 1994, EPA promulgated regulations requiring the phase-in of onboard refueling vapor recovery (ORVR) systems on new motor vehicles. Under section 202(a)(6) of the CAA, moderate ozone nonattainment areas are not required to implement Stage II vapor recovery programs after promulgation of ORVR standards.

KDAQ submitted a SIP revision on April 25, 2013, to exempt Stage II vapor control requirements for the Enterprise Holdings, Inc., facility located at the Cincinnati/Northern Kentucky International Airport in Boone County. On May 16, 2013, EPA published a proposed rulemaking to approve Kentucky’s April 25, 2013, SIP revision related to Stage II requirements at the Enterprise Holdings, Inc., facility. Detailed background for today’s final rulemaking can

be found in EPA's May 16, 2013, proposed rulemaking. *See* 78 FR 28776. The comment period for this proposed rulemaking closed on June 17, 2013. EPA did not receive any comments, adverse or otherwise, during the public comment period.

II. Final Action

EPA is taking final action to approve the aforementioned source-specific SIP revision request from Kentucky. VOC emissions from vehicles at the Cincinnati/Northern Kentucky International Airport Enterprise Holdings, Inc., facility are controlled by ORVR, therefore, EPA has concluded that removal of Stage II requirements at this facility would not result in an increase of VOC emissions, and thus would not contribute to ozone formation. The Commonwealth has requested removal of this requirement for this facility and EPA has determined that Kentucky has fully satisfied the requirements of section 110(l) of the CAA. Therefore, EPA is taking final action to approve this source-specific SIP revision, as being consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 11, 2013.

Beverly H. Banister,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-[APPROVAL AND PROMULGATION OF PLANS]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart (S) - Kentucky

2. Section 52.920 is amended, under Table 1, by revising the entry for “401 KAR 59:174” to read as follows:

§52.920 Identification of plan.

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(c) * * *

Table 1—EPA-Approved Kentucky Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 59 New Source Standards				
**	**	*	*	*
401 KAR 59:174	Stage II controls at gasoline dispensing facilities	04/25/13	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Exemption from Stage II vapor control requirements for rental fleet vehicle refueling at the Cincinnati/Northern Kentucky International Airport Enterprise Holdings, Inc., facility.
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[FR Doc. 2013-22973 Filed 09/24/2013 at 8:45 am; Publication Date: 09/25/2013]